

2468

LOVE AND THE JUDGE

Interview by Neil McMahon
Sun-Herald
Sunday Age

20 June 2010

The Hon. Michael Kirby AC CMG

LOVE AND THE JUDGE

Interview by Neil McMahon

Sun-Herald

Sunday Age

20 June 2010

As Michael Kirby knows well, some things add up only with hindsight, and even then the future can have other ideas.

The law, for instance, can take its time to make sense - and still later change its mind. Love is even more fickle. Life is a puzzle, and Kirby's life is a case in point. If the sum of it makes sense today, the living of it can appear a journey far less certain.

He is 71 now, seemingly serene, and therefore more comfortable describing the verities that have sustained him than he is harping on doubts that might once have plagued his peace of mind. There are so many things Kirby says he has never had to question. A loving family that always embraced him. An intellect that rarely failed him. A career that fulfilled him. A quiet but consistent faith in God. And perhaps the defining pillar of his life: a relationship that began 41 years ago, and still thrives today. Kirby is talking to *The Sunday Age* about the love of his life, and the secret he slowly surrendered to pursue a grand, life-long love affair.

"Pretty heroic," Kirby says with a smile of his relationship with Johan van Vloten. He is describing its length, but he might as well be hailing its survival - from its beginnings in a world very different from today's in its acceptance of gay people; through decades of public secrecy; an unusual coming out when Kirby was on the High Court; a tawdry but baseless political scandal with the couple at its centre; and finally, now, the first detailed public recounting by both men of a love Kirby describes as "my great blessing".

Van Vloten has never before spoken publicly. He has been coaxed on to the public stage for an ABC documentary on Kirby's life, to air next Sunday. In it, he at last pairs his voice with his partner's to give viewers an intimate look at their relationship - and, surely, the nation's first close-up examination of any gay romance of such duration.

As Kirby tells it, when he came out in 1999 - via a discreet change to his *Who's Who* entry - it was van Vloten who was the instigator. "He said we owed it to the younger generation. He wasn't so concerned about the politicians, he was concerned about young people who had gone through a similar life to ourselves."

Now, once more, they are cast as teachers of sorts, the focus on their relationship again playing its part in changing the way Australians view gay people.

In our conversation it is clear Kirby is delighted to publicly celebrate his love and to have van Vloten do it with him. "I'm very proud of him," Kirby says of his partner's TV appearance. But he hopes people come away from this interview and next week's program not celebrating them as something special, but recognising the everyday simplicity of a relationship that just happens to be between two men.

"In fact," he says, "I think the whole thing is a bit boring, but most human lives are boring. But the boringness of it is a very important message to get over to fellow citizens. It's not the whole of either of us, Johan and me, but it is a great blessing to us."

It began in early 1969, when both men were 29. Kirby had just endured the end of his first love affair, with a Spaniard he'd met at a gay bar in Sydney. When the Spanish man left town, the young lawyer brushed off a bruised heart and ventured out again.

"I remember being at my apartment in Kirribilli and looking out at all the little lights (across the harbour) in Sydney and the eastern suburbs and thinking, 'There must be someone out there'. And then I went in by the ferry."

Call it fate. Van Vloten was out for a drink, too. He remembers the night just as clearly, including Kirby's opening conversational gambit: an eccentric dash of German history. "He was dressed in a very odd combination of clothes," van Vloten recalled to the ABC. "It was February and it was hot and he wore an orange jumper, very heavy type, and yellow corduroy trousers, and so then he heard my accent and the next question was, 'What do you think of Von Ribbentrop', which confirmed my first impression that after the clothes, this is a mad guy. My luck. But his voice was interesting."

They ended up back at Kirby's place in Kirribilli, and have been together ever since.

"We've often talked about ... the chance that each of us made a decision to go to that venue that night, and how different our lives would have been had we not made that decision," Kirby says, calling it a reminder of how "propinquity and chance play a great part in human relationships".

"And when you speak to straight people you find the same stories, it's just a matter of luck. You've got to be very lucky in life to find somebody who will put up with you ... I have been very lucky."

It's when Kirby describes his life leading up to that meeting that you understand why he considers it such a gift. In keeping with the times, his sexuality - something of which he had been aware since puberty, and which he regarded as an unchangeable fact of life - nonetheless had to remain hidden. "At the time," he says, "I thought, well, this is just how it is. Not the natural order of things, but the way society mistakenly was organising itself and this was just what was expected of me. I had a sexual life but it was always a fantasy life. It was all suppressed. And that was a hard journey, especially suppressing things to the people who were most important to you."

Did he have girlfriends? "No. And I never had walkers. I had women friends. But I never really pretended to be something that I wasn't. I wasn't always direct about who I was but I wasn't deceitful about it or suggesting something that I wasn't."

Kirby was acutely conscious of what was at stake. Growing up, his family firmly believed he might one day be prime minister, and a political career did cross his mind. But: "Two things stood like the Titanic iceberg in the way."

Attending a Labor Party branch meeting, he discovered he was bored numb by the political game. "And the second impediment was my sexuality. It was rumoured in my youth that Edward Heath in Britain was gay and he rose to be prime minister, but he had a very empty life. I'd grown up in a loving family and with loving relationships and I just didn't see that as an option really."

So he focused on the law, a career that would take him to the pinnacle of the Australian legal system in a profession in which he believed he could at least lead a discreet gay life. "I obeyed the rule of don't ask,

don't tell, which is essentially a rule imposed by the majority, which can handle variations within it, of knowing that there are gay people and not worrying too much about that, but they don't want to think about it. And they don't want to have its reality forced upon them."

Kirby and van Vloten grew adept at keeping their relationship under wraps.

"Sydney was like most towns, where homosexuality was not pronounced," van Vloten tells the ABC. "You had to camouflage ... as best you could. There were things you could not do ... We always realised that was going to be a difficulty, [and] he had far more to lose than I had."

Though their families knew and were accepting, outside their inner circle "don't ask, don't tell" remained the rule. But as attitudes towards homosexuality loosened, Kirby says, he increasingly came to believe that his being gay was an open secret, particularly when he became a high-profile campaigner on AIDS issues in the 1980s. "That was sort of code language for my sexuality," he says. Paul Keating, he is certain, knew the truth when he named Kirby to the High Court in 1996. Three years later, the judge came out in *Who's Who*. There was barely a ripple. "The non-secret is out," *The Canberra Times* editorialised.

"I think it is a good thing to have done it," he says now. "Mind you, I think the attack on me in the Senate was one consequence of that so you shouldn't deceive yourself into thinking that it's all an easy road. Some people get very upset about such things."

Some people, indeed; Liberal senator Bill Heffernan in particular. In 2002, Heffernan used the protection of parliamentary privilege to unleash an extraordinary attack on Kirby and van Vloten, quoting from a fabricated document to accuse the justice of using Commonwealth cars to pick up male prostitutes in Sydney. The senator was forced to resign his parliamentary secretary's post when the fraud was exposed, and he publicly apologised, but not before Kirby and van Vloten had endured a week of public humiliation.

Eight years on, Kirby betrays no sign of anger, but insists it is a subject he hates having to discuss. "I'd rather not talk about it really because every time I do so it becomes part of my life," he says "Do you know, if you Google Johan's name, what comes up is not this prudent, loving, faithful companion. What comes up is Senator Heffernan's attack. I

regard that as sad and offensive. I hope that one day if his name is Googled what will come up is his example of human kindness, support, intelligence and goodness to everyone."

Van Vloten himself is less forgiving: he believes Kirby was targeted because he was gay, and for political reasons, as a result of court decisions that went against the Howard government.

"The Heffernan affair would have been the result of his coming out, plus one or two decisions which were very, very unpopular with the government of the day, particularly the *Wik* decision ... there must have been a sore spot there." He adds: "I always knew that in the long run these documents would prove to be false because if there was any relevance or truth in that issue you'd be hanged for stupidity."

While Kirby won't attack Heffernan directly, his partner makes clear his contempt: "This man didn't regret it at all, what he did, only regretted that it went that way."

It's an issue Kirby says brings to the fore a key difference between them: he is a lifelong Christian of Anglican faith, while van Vloten is a non-believer. "He's opposed to [religion] and has always been opposed to it. He's always been puzzled, as he puts it, that one of the most intelligent people he's met could still take seriously all that stuff of the old men in turbans. And they were all old men, as he keeps pointing out to me. Not enough women in religion."

And when it comes to forgiving Heffernan, Kirby says of his partner: "He comes from an agnostic position whereas I come from a Christian position."

Indeed, it is difficult to get Kirby to turn his verbal guns on anybody. Of Tony Abbott, who came under fire earlier this year for saying he felt "threatened" by gay people, Kirby offers a defence of sorts of the Liberal leader.

"I think he was just being honest about the journey that he's gone on. I hope that he'll continue on a journey to understand scientific reality ... And he's backed off a bit since then. I've been on a journey, he's on a journey, Mr Rudd's on a journey, we're all on a journey."

For Kirby, who retired from the High Court last year, that journey shows no signs of slowing down. He insists this is the beginning of his second

act. Indeed, he maintains a startlingly busy global schedule of speaking engagements and other commitments. "My best years lie ahead," he says with a laugh.

He describes his working life as a joy, his private life as "a miracle". Which prompts the question: if it were legal, would he and van Vloten marry? The answer is a small surprise. While he supports gay marriage, he wonders if it would be wise to tamper with a partnership that has withstood the test of so many years.

"We possibly would not," he says. "We have gone through long years, and we have, I think, a wonderful relationship. You'd have to be worried about [losing] the magic."

This story was found at: <http://www.theage.com.au/national/love-and-the-judge-20100619-yo2r.html>
